NIA
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COMMISSION ON THE STATUS OF WOMEN

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[Statement by Betty Stephens, chairperson, on the effects of Jarvis-Gann]

Real prop tax--CA
Affirmative action programs--CA

PRESS RELEASE

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FOR IMMEDIATE RELEASE

In response to inquiries from women on the effects of the Jarvis-Gann initiative, Betty Stephens, chairperson of the California Commission on the Status of Women, today issued the following statement:

Employment and services for women and their families will be drastically reduced under Proposition 13.

1. Lay-offs at all levels of government affecting thousands of workers will be made primarily on the basis of seniority. Gains in employment for women are only recent; they have been last hired and will be first fired.

2. Social services which are primarily used by women and their children will be eliminated or seriously cut back. Such services provided by counties include relief programs for older women, rape crisis centers, shelters for battered women, child care centers, and health care through county hospitals.

3. The city and county commissions on the status of women which serve 32 communities throughout the state will be seriously crippled in their services to women at all economic levels.

Assemblywoman Maxine Waters has introduced AB 3532 which requires local governments to consider factors other than seniority in making staff reductions. The Commission supports this bill which requires each city, county and school district to consider facts such as job performance, job necessity and affirmative action in making decisions to lay off or reassign employees.

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I. FRAMEWORK

A. INTRODUCTION

1. Equal Employment Opportunity

The generally accepted definition of equal employment opportunity is the right of all persons to apply, be employed, work, and advance on the basis of merit, abilities, and potential. For many years, however, this right has been severely restricted by discriminatory employment practices operating against various ethnic groups in our society. Original actions to prohibit such discrimination by state fair employment laws and Presidential Executive Orders in the 1940's and 1950's proved insufficient. Finally, Congress provided Federal legal enforcement for equal employment in the Civil Rights Act of 1964 with strengthening amendments added in 1972.

Title VII of the Civil Rights Act prohibits discrimination because of race, color, religion, sex, or national origin, in all employment practices, including hiring, firing, promotion, compensation, and other terms, privileges and conditions of employment. The U.S. Equal Employment Opportunity Commission (EEOC) was created to administer Title VII and to assure equal treatment for all in employment.

As amended (by the Equal Employment Opportunity Act of 1972) Title VII now covers state and local governments.

When equal employment laws first were enacted, it was generally believed that discrimination took place primarily through conscious, overt actions against individuals; therefore, those laws expressly prohibited such actions, and, to some degree, overt discrimination has declined.

But destructive, persistent employment discrimination remains, confirmed by the statistics of unemployment,

non-employment, underemployment, and incomes of minorities and women, by the daily experience of agencies administering equal employment laws, and by findings of the courts. Much discrimination, particularly against women, persists through intentional acts. But the most pervasive discrimination today results from normal, often unintentional and seemingly neutral practices throughout the employment process. Employment systems perpetuate discriminatory effects of past discrimination even when original discriminatory acts have ceased, and continue to discriminate daily, creating very unequal opportunities for many minorities and women.

Identification and elimination of such "systemic" discrimination resulting from regular employment practices is the major focus of equal employment efforts today.

2. Affirmative Action

The courts, in interpreting equal employment law, have clearly recognized the existence of "systemic" discrimination, and the need to eliminate it through specific remedial actions. Title VII, as amended, provides that when a court finds employment discrimination, it may "order such affirmative action as may be appropriate" to eliminate it. Consistently, where courts have found that the effects of employment practices -- regardless of their intent -- discriminate against a group protected by law, they have ordered specific affirmative actions to eliminate present and future discrimination and to provide equitable remedies for consequences of past discrimination.

The need for affirmative action was first recognized in Presidential Executive Orders from 1961 through 1967 requiring government contractors to take positive, continuing, result-oriented affirmative action to eliminate job discrimination.

The present Executive Order 11246 (as amended by Executive Order 11375) requires all major non-construction contractors

and subcontractors to conduct their own self-analysis to determine if their employment system has discriminatory effects, and to take appropriate remedial affirmative action, without need of any legal proceedings. The Order requires large contractors to implement written affirmative action plans, and regulations spell out detailed requirements for such plans.

Title VII, as amended, does not explicitly require affirmative action, but when there is a finding of discrimination through compliance investigation or through self-audit, the EEOC is guided by remedies and requirements outlined by the Federal courts. The courts have ordered comprehensive affirmative action, including numerical hiring and promotion goals, where necessary, to compensate for effects of past discrimination.

In March 1972, Congress amended Title VII, giving EEOC direct access to the courts. As a result, legal actions have increased substantially, and will increase far more rapidly in the future. The impact of legal rulings and court-ordered affirmative remedies now will be felt far more directly by employers.

The message conveyed by the court decisions is clear: If a statistical survey shows that minorities and women are not participating at all levels of the workforce, in reasonable relation to their presence in the population and the labor force, the burden of proof is on the employer to show that this is not the result of discrimination, however inadvertent.

> What is required in such a situation is the removal of artificial, arbitrary and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissable classification.

The "artificial, arbitrary and unnecessary barriers" identified by the Supreme Court and by many other Federal courts,

include practices and policies of recruitment, selection placement, testing, systems of transfer, promotion, senority, lines of progression, and many other basic terms and conditions of employment.

Removing these barriers requires positive, affirmative action to develop new policies and practices that provide all persons opportunity for employment on an equal basis.

Extensive efforts to develop procedures, analyses, data collection systems, report forms, and fine written policy statements are meaningless unless the end product will be measurable, yearly improvement in hiring, training and promotion of minorities and women in all parts of an organization.

Thus, the essence of an Affirmative Action Program should be:

- Establish a strong written policy and commitment;
- Assign responsibility and authority for the program to a top official;
- Analyze present work force to identify jobs, departments and units where minorities and women are under-utilized;
- Set specific, measurable, attainable hiring and promotion goals, with target dates, in each area of under-utilization;
- Make every manager and supervisor responsible and accountable for helping to meet these goals;
- Re-evaluate job descriptions and hiring criteria to assure that they reflect actual job needs;
- Find minorities and women who qualify or can become qualified to fill goals;
- Review and revise all employment procedures to assure that they do not have discriminatory effect

and that they help attain goals;

- Focus on getting minorities and women into upward mobility and relevant training pipelines where they have not had previous access.

- Develop systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, find out why, and make necessary changes.

To assist the counties in developing their affirmative action plans, the Department of Benefit Payments and Merit Systems Services of the State Personnel Board developed comprehensive guidelines detailing all the components needed for an effective affirmative action plan. The guidelines provided counties with the requisite tools for developing affirmative action plans responsive to their own individual assessments and goals.

The Merit System Services Affirmative Action Guidelines, along with a letter of explanation, were sent to the county welfare departments in January, 1975.

In May, 1974, the Department of Benefit Payments and the State Personnel Board entered into an agreement under which, among other things, the Merit System Services, a unit of the State Personnel Board, became responsible for the implementation of the affirmative action aspects of the Department of Benefit Payments Civil Rights Program, i.e., ascertaining whether or not the personnel policies and practices of the 58 county welfare departments are in compliance with Title VI of the Civil Rights Act of 1964, as amended.

Merit System Serivces is held responsible by the United States Civil Services Commission for certification of compliance with appropriate Federal laws, policies, procedures and guidelines, including Title VII of the Civil Right Act, as amended, and Executive Order 11246, as amended, and also for the establishment and maintenance of the personnel merit system within the 58 counties.*

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* Currently there are 38 counties where the State Personnel Board through Merit System Services directly administers a complete Interagency Merit System (IMS) for county welfare department employment. In the remaining 20 counties, the State Personnel Board through Merit System Services agrees to provide general supervision of the operation of the Approved Local Merit Systems (ALMS).